

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-218237

DATE: June 3, 1985

MATTER OF: Viereck Company

DIGEST:

1. Protest that bid was nonresponsive because it did not include descriptive literature is without merit where the literature in fact was furnished.
2. Where invitation for bids contained a descriptive literature clause but did not request specific information describing the operation of a pressure die interface zone recapture feature, bidders were not required to furnish such information and bid omitting it was responsive.
3. Protester's allegation that awardee will not be able to deliver a product that conforms to the requirements of the solicitation raises an issue involving the agency's determination that the awardee is responsive, a matter that GAO generally does not review.

Viereck Company protests the award of a contract for a tube-bending machine to 600 Machinery, Inc. under invitation for bids (IFB) No. F33601-84-B-A039, issued by Wright-Patterson Air Force Base, Ohio. We deny the protest in part and dismiss it in part.

The solicitation is for a machine to bend tubes ranging from 3/8-inch to 3 inches in outside diameter. Among other things, the solicitation listed pressure die interface zone recapture as a required operating capability, terminology that describes the machine's ability to withdraw its pressure die in some circumstances in order to avoid interference between the pressure die and clamping devices that transport the tubing. The solicitation also

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required that the machine be one of the manufacturer's current models. Finally, the solicitation required that bidders submit descriptive literature and contained the clause prescribed by the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-21 (1984), advising bidders that descriptive literature would be used for evaluation purposes to establish the details of the product offered.

The agency received two bids. 600 Machinery, the low bidder, offered to supply a Schwarz-Wirtz CNC 80P tube-bending machine, attached a standard specification sheet for the machine, and stated in a cover letter that it would modify the machine to meet the requirements of the solicitation. Viereck offered a Teledyne Pines tube bender, model No. M-NC 075. The agency found both bids to be responsive. Award was delayed, however, pending resolution of a protest filed by a third company that the specifications, including the pressure die interface zone recapture feature, were unduly restrictive. We denied that protest in Eaton Leonard Corp., B-215593, Jan. 17, 1985, 85-1 CPD ¶ 47, and the agency awarded the contract to 600 Machinery.

According to Viereck, the awardee's bid was nonresponsive to the recapture requirement because 600 Machinery's descriptive literature did not refer to the required recapture capability. Viereck also complains that the German-built machine 600 Machinery offered copied a Teledyne Pines patented pressure die interface zone recapture design that cannot be imported legally into this country. Thus, Viereck contends the machine the awardee bid will have to be redesigned and (1) will not meet the recapture requirement or (2) will not have met the current model requirement as of the bid opening date.

On the other hand, the Air Force says that 600 Machinery's bid was responsive because it was an unequivocal offer to supply a machine in conformance with all solicitation requirements. The agency contends further that the awardee's descriptive literature did in fact show that its machine has a pressure die interface zone recapture capability. In support of this contention, the agency points out that 600 Machinery's descriptive literature stated that the machine includes a hydraulic pressure die

assist and withdrawing unit. Finally, the agency says it is not aware of any restraints on the importation of the type of machine the awardee proposes to supply.

To the extent that Viereck is contending that the Air Force should have rejected the awardee's bid as nonresponsive, its contention is without merit. Viereck assumes that 600 Machinery was required to show through its descriptive literature that the product it offered incorporates an automated recapture process in which the position of the active components of the machine is sensed automatically and controlled by a microprocessor to avoid interference. The solicitation, however, refers to pressure die interface zone recapture as the required operating capability, not to automated recapture, and thus permitted bids on equipment such as 600 Machinery's, which, as the firm's descriptive literature indicates, provides a means to withdraw the die hydraulically from an interfering position even though this may require that the operator give the machine programming instructions each time the process must be performed.^{1/}

Moreover, although the solicitation stated that descriptive literature was required, it nowhere set forth a specific requirement for literature showing that the interface zone recapture requirement was met. Thus, even if 600 Machinery's descriptive literature was incomplete in demonstrating its pressure die interface zone recapture capability, that alone would not have been a sufficient reason to reject the bid. Rather, because 600 Machinery


^{1/} We recognize that in our previous decision concerning this procurement, Eaton Leonard Corp., *supra*, we characterized pressure die interface zone recapture as an automated process. Our description was not entirely accurate. The process is automatic in the Teledyne Pines tube bender, a fact which led us to the mischaracterization because we described the function recapture by referring to the Teledyne Pines process. However, the record now before us indicates that other machines may perform the same function without necessarily achieving the same degree of automation.

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took no exception to the recapture requirement, its bid was responsive to that requirement. Beaver Linoleum & Tile Co., Inc., B-215705, Dec. 3, 1984, 84-2 CPD ¶ 604.

The remainder of Viereck's protest raises issues we generally do not review. Basically, Viereck contends that the awardee will not be able to deliver the tube bender model on which it bid and will be forced to deliver a redesigned machine that will not meet the current model requirement of the solicitation. Whether a bidder is capable of performing a contract by delivering equipment that meets all contract requirements is a question of whether the firm is a responsible prospective contractor, see Aesculap Instruments Corp., B-208202, Aug. 23, 1983, 83-2 CPD ¶ 228, a question that the contracting officer must resolve in the affirmative prior to award. FAR § 9.103. The award of a contract constitutes the contracting officer's determination that the contractor is responsible. FAR § 9.105-2. This Office does not review affirmative responsibility determinations unless it is shown that the determination was made fraudulently or in bad faith or that special standards of responsibility stated in the solicitation were not met. 4 C.F.R. § 21.3(f)(5). There has been no such showing here. In addition, whether 600 Machinery actually delivers a machine that conforms to the requirements of the solicitation, and what should be done if it does not, are matters of contract administration which we also do not review. Id., § 21.3(f)(1).

The protest is denied in part and dismissed in part.

for 
Harry R. Van Cleve
General Counsel